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CAUCUS, Co-CHAIRMAN****Congress of the United States****House of Representatives****Washington, DC 20515-0906****March 12, 2010****COMMITTEE ON ENERGY AND COMMERCE****SUBCOMMITTEES:****COMMUNICATIONS, TECHNOLOGY, AND
THE INTERNET**

RANKING REPUBLICAN MEMBER

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CONSUMER PROTECTION****COMMITTEE ON VETERANS' AFFAIRS**

DEPUTY RANKING REPUBLICAN MEMBER

SUBCOMMITTEES:**HEALTH****OVERSIGHT AND INVESTIGATIONS**

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

0398

Dear Chairman Genachowski:

On the eve of the national broadband plan that the American Recovery and Reinvestment Act required, I am encouraged by early reports from you and the Commission staff. All indications suggest that the report will confirm what I have been saying for quite some time: Our country's broadband deployment and adoption numbers are far better than suggested by the special interest groups that stand to benefit from counterproductive regulation. For example, a number of the public briefings coming from the Commission have indicated that only about 7 million households lack access to broadband. That means that providers already make broadband available to approximately 95 percent of the country. I also understand the report will indicate that approximately two-thirds of households have already adopted broadband.

This indicates the success of the national broadband plan we have already had in place as a statutory matter since 1996, and as a regulatory matter since 1999: a free-market, deregulatory policy for the Internet and broadband that promotes investment in facilities-based competition. It also supports the points that Blair Levin, the executive director of the FCC's broadband initiative, made in his December 2009 interview on C-Span's *The Communicators*. As Mr. Levin so aptly put it, "broadband is primarily a function of private investment." Only in those few parts of the country where it would otherwise be uneconomic for the private sector to provide service might it be appropriate for the government to step in.

He also described as "not very productive" the calls by Public Knowledge and Free Press to force carriers to provide access to competitors by unbundling their networks or mandating they serve a separate wholesaling function. The reason, he explained, is that the Commission is "not that terribly interested in moving toward things which will just freeze capital investment and have long, complicated court battles." More importantly, he observed, these suggestions "fail to look at what's really going on in the market." The

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broadband market is growing and evolving rapidly, and it is "not appropriate to be looking at those kinds of major things when there is such uncertainty about the market."

I could not agree more. And as the facts support Mr. Levin's statements, I expect that the text of the broadband plan will be rooted in these observations and not littered with hidden agendas—such as placeholders for network neutrality, old-style, Title II common carrier regulations, or the type of spectrum conditions advocated by M2Z and others in the past that have hobbled auctions. Whether described in clear language or cloaked in veiled references, mandates such as these will only exacerbate the uncertainty and hinder the investment that Mr. Levin spoke so eloquently about. The presence of such mandates would also indicate that the national broadband plan has become a political document, not the honest, fact-based inquiry that I know you and I have both hoped the plan would be.

While I am encouraged that the data in your report will support a free-market, pro-investment approach, I cannot help but wonder how many resources and how much money we have spent to reiterate what existing evidence already showed and many of us have known for so long. Accordingly, please respond to the following questions by March 22, 2010.

1. Why, specifically, was it necessary to delay release of the plan to March 17 from the statutorily required deadline of February 17?
2. What was done between February 17 and March 17?
3. How much money have you spent in preparing the plan? Please provide a total figure as well as a breakdown, including figures for categories such as the total amount paid to existing employees for time spent on the plan, the total amount paid to new employees for time spent on the plan, amount spent on studies and reports, amount spent on travel, amount spent on workshops, and amount spent on printing and production.
4. How many staff people were hired specifically to work on the plan? From where were they typically hired? What is the employment classification of these staffers? How many of them had a background in communications law as opposed to a general consulting background? Were they hired through the same process other FCC employees who do not work on the plan are typically hired?
5. The Administration has emphasized its policies to limit the hiring of, or communication with, private sector employees in connection with government generally and the American Recovery and Reinvestment Act in particular. While I am not convinced that such interaction between the public and private sectors is problematic, I am concerned if a double standard is being applied. How is it consistent with the Administrations' overall position on the interaction between the private and public sectors the FCC used private sector consultants, on a limited-term basis, many of whom may return to the private sector?

6. How did the FCC review potential conflicts of interest among employees hired from the private sector? Does the FCC plan to make available in publicly reviewable form any potential conflicts so that the American people can be assured that the plan was put together in an objective manner?
7. How soon will an electronic, searchable copy of the plan be available to help facilitate review of the plan by congressional staff and the public?
8. Please answer yes or no to each of the following questions: If the D.C. Circuit rules that the FCC lacks jurisdiction under Title I to impose network neutrality regulations, will you, as Chairman, propose that the FCC classify broadband services under Title II? Might you make such a proposal even if the D.C. Circuit does not so rule and, if so, why?
9. What is your personal opinion on whether broadband services should be classified under Title II?

Thank you for your consideration. If you have any questions, please feel free to contact me. I look forward to your responses.

With kind regards, I am

Sincerely,



Cliff Stearns, Ranking Member
Subcommittee on Communications, Technology,
and the Internet
House Energy and Commerce Committee

cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 23, 2010

The Honorable Cliff Stearns
Ranking Member
Subcommittee on Communications, Technology,
and the Internet
Committee on Energy and Commerce
U.S. House of Representatives
2370 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Stearns:

Enclosed please find my responses to the questions in your letter of March 12, 2010.
Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, which appears to be "J. Genachowski", is written over the typed name. The signature is stylized with a large, sweeping "J" and a long horizontal stroke.

Julius Genachowski

Enclosure

Chairman Genachowski's response to Congressman Stearns's Questions

1. Why, specifically, was it necessary to delay release of the plan to March 17 from the statutorily required deadline of February 17?

The Commission requested a one-month extension in the interest of advancing a National Broadband Plan that reflected the extraordinary importance of the task and that was responsive to the unprecedented record developed during the comment and workshop period. The Commission's process for the Plan was unparalleled. It was the most open and participatory process in the agency's history and included over 50 public workshops and field hearings, 30 Public Notices, and significant hours devoted at eight separate Commission meetings to provide the public with updates on the Plan's development.

2. What was done between February 17 and March 17?

The additional time enabled the staff to thoroughly compile and review the extraordinary record developed during this effort – over 74 thousand pages of comments from 700 parties -- to obtain additional input from key stakeholders, and to more fully brief Commissioners on aspects of the Plan as it came together.

3. How much money have you spent in preparing the plan? Please provide a total figure as well as a breakdown, including figures for categories such as the total amount paid to existing employees for time spent on the plan, the total amount paid to new employees for time spent on the plan, amount spent on studies and reports, amount spent on travel, amount spent on workshops, and amount spent on printing and production.

The Chart below provides the information you requested.

FCC's Broadband Plan Expenditures for FY 2009 & FY 2010¹

Compensation and Benefits		In Millions of Dollars (Estimates)
Existing FCC Employees (over 300 employees, part time)		2.38
New Employees (78 Temporary employees, full and part time)		4.00
Other Expenditures		
IT Infrastructure and Support ²		5.37
Software and Cost Modeling		3.92
Data & 3 rd Party Research ³		4.01
Outreach (including workshops and travel)		0.34
Printing and Production ⁴		0.60
Total		20.62
Portion of Total Funded through FCC Appropriations		7.34
Portion of Total Funded through ARRA funding		13.28

¹ Expenditures as of March 15, 2010, which includes FCC appropriations and ARRA funds

² Includes infrastructure upgrades to host new datasets, and web-based tools and information services.

³ Includes purchase of over 20 third-party datasets

⁴ The printing is being performed in-house, above represents pre-production cost estimate

4. How many staff people were hired specifically to work on the plan? From where were they typically hired? What is the employment classification of these staffers? How many of them had a background in communications law as opposed to a general consulting background? Were they hired through the same process other FCC employees who do not work on the plan are typically hired?

The limited term hires the agency brought in to develop the Plan reflected Congress's broad charge to the FCC under the American Recovery and Reinvestment Act, including the requirement to assess and develop strategies for use of broadband to address the important national purposes Congress requested, such as "advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth." These limited term hires are highly qualified and dedicated professionals skilled in a broad array of communications disciplines (legal and non-legal), or leaders in fields like education, medicine, and energy who understand the stakes involved in creating a comprehensive broadband infrastructure. In all, the FCC hired 78 limited term staff. Some of these staff were employed for the entire duration of the National Broadband Plan; others were employed for only part of that time. These employees typically were hired from private sector organizations, including consulting firms, law firms, investment firms and operating businesses, as well as non-profit and other organizations. These employees serve on non-permanent appointments in various job classifications such as: Economist, Program Manager, Program Analyst, Telecommunications Analyst, Attorney and Consultant. Nine of the hires had a specific background in communications law; many more had experience in non-legal aspects of the communications sector. The Commission was granted Direct Hire Authority (DHA) from the Office of Personnel Management in response to the congressionally mandated requirements for a National Broadband Plan. Direct Hire Authority is a competitive process that allows for a streamlined approach to hiring. In addition to using DHA, the Commission used appointing authorities that are outside the competitive hiring process such as the Recovery Act appointing authority, temporary consultant and student appointment authorities, as well as details of staff from other federal agencies to quickly ramp up its broadband efforts.

5. The Administration has emphasized its policies to limit the hiring of, or communication with, private sector employees in connection with government generally and the American Recovery and Reinvestment Act in particular. While I am not convinced that such interaction between the public and private sectors is problematic, I am concerned if a double standard is being applied. How is it consistent with the Administrations' overall position on the interaction between the private and public sectors the FCC used private sector consultants, on a limited-term basis, many of whom may return to the private sector?

The unprecedented scope of the requirements set out in the Recovery Act to create this Plan within one year challenged the FCC to assemble a team and access expertise in the latest technology that is not readily available in the government. The Commission gained crucial

insight from the broad array of skilled professionals and stakeholders hired to assist us in creation of the Plan. These professionals included engineers, economists, entrepreneurs, scholars, analysts, lawyers, as well as leaders from non-profits, medicine, education, energy, and government. All came together as public servants to tackle vitally important issues focused on what's right for our country.

6. How did the FCC review potential conflicts of interest among employees hired from the private sector? Does the FCC plan to make available in publicly reviewable form any potential conflicts so that the American people can be assured that the plan was put together in an objective manner?

As soon as prospective senior members of the Broadband task force were identified, they were contacted by an ethics official in the FCC's Office of General Counsel (OGC) and were personally vetted, in advance of being hired, to ensure that they had no disqualifying conflicts or appearance concerns and that they were aware of the ethics restrictions that would govern their activities as Federal employees. Those who were determined by OGC to have potential conflicts or appearance concerns that could not be resolved were not hired.

All individuals who were selected for hire as members of the Broadband team were contacted by the FCC's Human Resources Office and provided a form on which they were required to indicate whether they had financial holdings or interests of any kind. Those who indicated that they had such holdings or interests were referred to OGC, and their holdings or interests were reviewed for potential conflicts with their Federal service. In addition, the two individuals who were hired as members of the Senior Executive Service, and the one who was hired as a Schedule C employee, were required to file Public Financial Disclosure Reports (SF-278). All other employees who were hired at or above the GS-13 level were required to complete Confidential Financial Disclosure Reports (OGE Form-450). Both forms list the investments held by the filing employee, their spouse and their dependent children. Any employee who reported any personal investments in companies subject to significant regulation by the FCC was required to divest such investments.

Although the FCC is not permitted to make available in a publicly reviewable form the contents of any employee's Confidential Financial Disclosure Report, the contents of the Public Financial Disclosure Reports filed by three senior members of the Broadband team are available upon request by members of the public.

7. How soon will an electronic, searchable copy of the plan be available to help facilitate review of the plan by congressional staff and the public?

A searchable pdf file was available on the FCC's website as soon as the Commission released the Plan on March 16th. There will be a Spanish version of the plan produced in April and a Braille version soon after.

8. Please answer yes or no to each of the following questions: If the D.C. Circuit rules that the FCC lacks jurisdiction under Title I to impose network neutrality regulations, will you, as

Chairman, propose that the FCC classify broadband services under Title II? Might you make such a proposal even if the D.C. Circuit does not so rule and, if so, why?

9. What is your personal opinion on whether broadband services should be classified under Title II?

As you know, the Commission is currently litigating the case to which you refer, *Comcast Corp. v. FCC*, No. 08-1291 (D.C. Cir. argued Jan. 8, 2010), before the D.C. Circuit. The FCC is vigorously asserting the position, presented in the Commission's brief in that case, that Congress has delegated the agency the authority to address certain broadband issues under Title I and other provisions of the Communications Act. When the D.C. Circuit issues its decision in the *Comcast* case, we will review and assess the significance of that decision for matters before the Commission.

On the broader question of the appropriate treatment of broadband under the Communications Act, I believe broadband is essential to our country's economic health and global competitiveness; to improving the lives of the American people; and to meeting critical national challenges like education and public safety. I believe the FCC must pursue policies that promote investment, innovation, competition and consumer interests associated with broadband networks and services. I am committed to ensuring an approach to broadband that will continue to allow the agency to meet the goals Congress has set for it.